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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

In re Applications of)	MM Docket No. 97-76
)	
)	
POSITIVE ALTERNATIVE RADIO, INC.)	File No. BPED-920327MH
(Hereafter "Positive"))	
Point Pleasant, West Virginia)	
Req: 88.1 MHz, Channel 201A)	
3 kW (H&V); 90 meters)	
)	
)	
For Construction Permit for a New)	
Noncommercial Educational)	
FM Station)	
)	
THE UNIVERSITY OF WEST VIRGINIA)	File No. BPED-921023MB
BOARD OF TRUSTEES)	
(Hereafter "Trustees"))	
Huntington, West Virginia)	
Has: 88.1 MHz, Channel 201A)	
1.15kW (H&V); -17 meters)	
Req: 88.1 MHz, Channel 201B1)	
9 kw (H&V); -12 meters)	
)	
For Modification of Facilities of		
Station WMUL-FM		
Huntington, West Virginia		

HEARING DESIGNATION ORDER

Adopted: February 13, 1997

Released: February 24, 1997

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive application for a new noncommercial educational FM Station in Point Pleasant, West Virginia and Trustees' mutually exclusive application to modify the facilities of Station WMUL-FM, Huntington, West Virginia. The mutually exclusive proposals are presented for a Section 307(b) determination

only, i.e., for a comparison of the respective communities' needs for the proposed new service rather than on an evaluation of the applicants' comparative qualifications.¹

2. Neither of the applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. Granfalloon Denver Educational Broadcasting, Inc., 43 Fed. Reg. 49,560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement.

3. Section 307(b) Issues. The respective proposals are for different communities and would serve different areas. Thus one proposal may receive a decisive preference based on the comparative need for the proposed new services. Consequently, it will be necessary to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial education FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better

¹ In its Notice of Proposed Rulemaking in MM Docket No. 95-31, In the Matter of Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, 10 FCC Rcd 2877 (March 17, 1995), the Commission announced that it was imposing a partial freeze on the processing of noncommercial educational-FM applications ("NCE-FM") until the Commission adopted new or revised NCE-FM comparative criteria. Further, the Commission indicated that it would no longer issue decisions in pending hearing proceedings involving competing applicants for NCE-FM broadcast facilities where those decisions would rely upon the existing comparative criteria for NCE-FM applicants. By Memorandum Opinion and Order in Santa Monica Community College District, 11 FCC Rcd 1123 (February 1, 1996), the Commission indicated that hearings for consideration of mutually exclusive NCE-FM proposals could proceed where consideration of the competing applications under the provisions of Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b), would prove dispositive.

serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

6. If, in view of the foregoing, no determination can be made as to which of the proposals would best provide a fair, efficient and equitable distribution of radio services pursuant to Section 307(b) of the Communications Act of 1934, as amended, then the proceeding shall be held in abeyance until such time as the Commission shall have adopted new or revised NCE-FM comparative criteria, in accordance with its NPRM in Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, MM Docket 95-31, 10 FCC Rcd 2877, 2879 (March 17, 1995).

7. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the day of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 418-1430. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Linda Blair, Chief
Audio Services Division
Mass Media Bureau